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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
6

7 **LEONARD A. SLAVEN,**

8 **Petitioner,**

9
10 **v.**

11 **PATRICK COVELLO,**

12 **Respondent.**
13
14

CASE NO. 1:20-cv-00606-AWI-JLT (HC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION, GRANTING
RESPONDENT'S MOTION TO
DISMISS, DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS,
DIRECTING CLERK OF COURT TO
ENTER JUDGMENT AND CLOSE
CASE, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY**

(Doc. Nos. 25 & 29)

15 Petitioner Leonard A. Slaven is a state prisoner proceeding in propria persona with a
16 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 28, 2021, the magistrate
17 judge assigned to the case issued a findings and recommendation to grant Respondent's motion to
18 dismiss. Doc. No. 29. This findings and recommendation was served on all parties and contained
19 notice that any objections were to be filed within twenty-one days from the date of service of that
20 order. To date, no party has filed objections.

21 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a
22 de novo review of the case. Having carefully reviewed the entire file, the Court concludes that the
23 magistrate judge's findings and recommendation is supported by the record and proper analysis.

24 In addition, the Court declines to issue a certificate of appealability. A state prisoner
25 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his
26 petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S.
27 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate of
28 appealability provides as follows:

1 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
2 district judge, the final order shall be subject to review, on appeal, by the court of
3 appeals for the circuit in which the proceeding is held.

4 (b) There shall be no right of appeal from a final order in a proceeding to test the
5 validity of a warrant to remove to another district or place for commitment or trial a
6 person charged with a criminal offense against the United States, or to test the
7 validity of such person's detention pending removal proceedings.

8 (c)

9 (1) Unless a circuit justice or judge issues a certificate of appealability, an
10 appeal may not be taken to the court of appeals from—

11 (A) the final order in a habeas corpus proceeding in which the
12 detention complained of arises out of process issued by a State
13 court; or

14 (B) the final order in a proceeding under section 2255.

15 (2) A certificate of appealability may issue under paragraph (1) only if the
16 applicant has made a substantial showing of the denial of a constitutional
17 right.

18 (3) The certificate of appealability under paragraph (1) shall indicate which
19 specific issue or issues satisfy the showing required by paragraph (2).

20 28 U.S.C. § 2253.

21 If a court denies a petitioner's petition, the court may only issue a certificate of
22 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
23 § 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists
24 could debate whether (or, for that matter, agree that) the petition should have been resolved in a
25 different manner or that the issues presented were 'adequate to deserve encouragement to proceed
26 further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S.
27 880, 893 & n.4 (1983)).

28 In this case, the Court finds that Petitioner has not made the required substantial showing
of the denial of a constitutional right to justify the issuance of a certificate of appealability.
Reasonable jurists would not find the Court's determination that Petitioner is not entitled to
federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further.
Thus, the Court will decline to issue a certificate of appealability.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendation (Doc. No. 29) that was filed on April 28, 2021,

1 is ADOPTED in full;

2 2. Respondent's motion to dismiss (Doc. No. 25) is GRANTED;

3 3. Petitioner's first-amended petition for writ of habeas corpus (Doc. No. 22) is
4 DISMISSED;

5 4. The Clerk of Court is directed to ENTER judgment and CLOSE the file; and

6 5. The Court DECLINES to issue a certificate of appealability.

7 This order terminates the action in its entirety.

8
9 IT IS SO ORDERED.

10 Dated: June 30, 2021



SENIOR DISTRICT JUDGE